

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JAMES C McGEE

No C-09-0861 VRW (PR)

Petitioner,

v

ORDER TO SHOW CAUSE

D K SISTO, Warden,

Respondent.

(Doc #3)

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Petitioner, a state prisoner at Kern Valley State Prison in Delano, California, has filed a pro se petition for writ of habeas corpus under 28 USC section 2254 challenging a judgment of conviction from San Mateo County superior court. He also seeks leave to proceed in forma pauperis under 28 USC section 1915. Doc #3.

I

On February 4, 2002, following his convictions of robbery and other felonies, petitioner was sentenced under the "Three Strikes" law to 90 years to life in prison based on two strikes

1 arising from prior robbery convictions in Nevada. On February 9,  
2 2004, the California Court of Appeal in an unpublished opinion  
3 affirmed the judgment of the trial court. Doc #2 at 79-99. On  
4 April 28, 2004, the Supreme Court of California granted review, and  
5 issued an opinion on May 22, 2006 affirming the judgment of the  
6 court of appeal. Doc #2 at 100-145. Petitioner then filed  
7 petitions for a writ of habeas corpus in the state superior and  
8 appellate courts, all of which were denied. Doc #2 at 169-77, 178-  
9 79 & 180-81.

## 11 II

12 This court may entertain a petition for a writ of habeas  
13 corpus "in behalf of a person in custody pursuant to the judgment of  
14 a State court only on the ground that he is in custody in violation  
15 of the Constitution or laws or treaties of the United States." 28  
16 USC § 2254(a). It shall "award the writ or issue an order directing  
17 the respondent to show cause why the writ should not be granted,  
18 unless it appears from the application that the applicant or person  
19 detained is not entitled thereto." Id § 2243.

20 Petitioner seeks federal habeas corpus relief by raising  
21 the following claims: (1) he was denied his rights to due process  
22 and a jury trial on the Nevada prior strikes allegations; and (2) he  
23 was denied his Sixth Amendment right to the effective assistance of  
24 trial counsel. Liberally construed, these claims appear cognizable  
25 under section 2254 and merit an answer from respondent. See Zichko  
26 v Idaho, 247 F3d 1015, 1020 (9th Cir 2001) (federal courts must  
27 construe pro se petitions for writs of habeas corpus liberally).  
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III

For the foregoing reasons and for good cause shown,

1. Petitioner's request to proceed in forma pauperis (Doc #3) is GRANTED.

2. The clerk shall serve by certified mail a copy of this order and the petition, and all attachments thereto, on respondent and respondent's attorney, the Attorney General of the State of California. The clerk also shall serve a copy of this order on petitioner.

3. Respondent shall file with the court and serve on petitioner, within 60 days of the issuance of this order, an answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be granted. Respondent shall file with the answer and serve on petitioner a copy of all portions of the state trial record that have been transcribed previously and that are relevant to a determination of the issues presented by the petition.


If petitioner wishes to respond to the answer, he shall do so by filing a traverse with the court and serving it on respondent within 30 days of his receipt of the answer.

4. In lieu of an answer, respondent may file a motion to dismiss on procedural grounds as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing Section 2254 Cases. If respondent files such a motion, petitioner shall file with the court and serve on respondent an opposition or statement of non-opposition within 30 days of receipt of the motion, and respondent shall file with the court and serve on petitioner a reply within 15 days of

1 receipt of any opposition.

2 5. Petitioner is reminded that all communications with  
3 the court must be served on respondent by mailing a true copy of the  
4 document to respondent's counsel. Petitioner also must keep the  
5 court and all parties informed of any change of address.

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8 IT IS SO ORDERED.

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12 VAUGHN R WALKER  
13 United States District Chief Judge  
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